THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 12407 of 2006

O r d e r:

The petitioner was appointed as a Driver in the respondents-APSRTC in the year 1986. While working as such, on 08.09.1992, the bus driven by him on the route Hafiz Babanagar-Charminar met with an accident, in which a cyclist, who sustained grievous injury to his head, died instantaneously. A case of rash and negligent driving was registered against the petitioner, and even a departmental enquiry was initiated against the petitioner. The charges of rash and negligent driving of the vehicle with lack of anticipation, having been proved in the enquiry, he was removed from service by order dated 20.03.1993 of respondent No.2. Assailing the said order of removal, the petitioner preferred appeal and review petition before the appellate authorities, which were rejected. Thereupon, he raised an industrial dispute in I.D. No.252 of 2000, and the Labour Court, by award dated 12.03.2001, directed the respondents-Corporation to reinstate the petitioner into service with continuity of service, but without back wages and imposed punishment of stoppage of eight annual increments with cumulative effect for fixing his pay on the basis of imposition of such penalty from the date of removal till the date of reinstatement. Assailing the award of the Labour Court, in so far as denying back wages and imposing punishment of stoppage of eight annual increments with cumulative effect, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned counsel for the respondents-APSRTC.

The learned counsel for the petitioner submitted that the Labour

Court having set aside the order of removal, passed by the disciplinary authority as confirmed by the appellate authority, and having ordered his reinstatement into service, ought to have granted back wages and non-granting of the same is illegal and arbitrary. He further submits that the Labour Court, without considering the report submitted by the Joint Accident Enquiry Committee, which did not disclose that the Cyclist died due to hitting of the bus, and without considering the fact that the Criminal Court acquitted the petitioner from the criminal case, registered on the same charges, erroneously passed the award holding that the accident occurred due to rash and negligent driving of the bus by the petitioner. He thus, prays to set aside the award of the Labour Court, in so far as it denied back wages and imposed punishment of stoppage of eight annual increments with cumulative effect for fixing his pay.

On the other hand, learned Standing Counsel for the respondents-APSRTC submitted that the charges against the petitioner stood proved in the departmental enquiry. Though the disciplinary authority passed order of removal, which was confirmed by the appellate authority, the Labour Court, though concurred with the view of the disciplinary authority, yet has taken a lenient view and ordered reinstatement of the petitioner subject to certain conditions without backwages, which cannot be said to be illegal and arbitrary, and no interference is called for therewith.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its

jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry. The petitioner was charge sheeted on the ground that on 08.09.1992 he drove the bus in a rash and negligent manner and caused fatal accident by hitting a Cyclist. The charge leveled against the petitioner stood proved in the departmental enquiry. The Labour Court, in fact, concurred with the findings of the disciplinary authority and the appellate authority that the accident occurred due to rash and negligent driving of the bus and lack of anticipation on the part of the petitioner. Though the Labour Court had concurred with the order of the appellate authority, confirming the order of the disciplinary authority, however, felt that the punishment awarded by the disciplinary authority is excessive and disproportionate to the misconduct, and while setting aside the order of removal, in exercise of its discretion under Section 11-A of the Industrial Disputes Act, 1947 directed reinstatement of the petitioner into service without backwages and subject to certain conditions. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (See **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey**[2]**)**.

It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the appellate authority had passed orders in violation of the principles of natural justice. But the Labour Court has set aside the order of removal passed by the disciplinary authority as confirmed by the appellate authority, and ordered reinstatement of the petitioner into service on the ground that the punishment imposed was disproportionate to the proved misconduct.

In **Karnataka Bank Ltd. v. A.L. Mohan Rao**[3], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority, as confirmed by the appellate authority, was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

It is the contention of the petitioner that the Labour Court failed to appreciate the judgment passed by the Criminal Court, wherein he was acquitted from the criminal case, filed on the same charges. I am unable to accept the said contention for the reason that the Labour Court, found that the criminal Court acquitted the petitioner because the identity of driver was not established, and whereas in the

departmental enquiry, the identity of the driver was established beyond reasonable doubt, though it is not required, and held that the said criminal case judgment is not helpful to the petitioner. In that view of the matter, I find no reason whatsoever to interfere with the impugned award of the Labour Court, which in fact, is a benevolent one.

There is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 30th June, 2006.
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[1] AIR 2003 SC 3044=2003AIR SCW3872

[2] (2006) 1 SCC 479

[3] (2006) 1 SCC 63